

DEPARTMENT OF STATE REVENUE

LETTER OF FINDINGS NUMBER: 03-0025P

Use Tax

For Calendar Years 1999 and 2000

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ISSUE(S)

I. Tax Administration – Penalty

Authority: IC 6-8.1-10-2.1(d); 45 IAC 15-11-2

Taxpayer protests the penalty assessed.

STATEMENT OF FACTS

Taxpayer's audit was completed on September 6, 2002. Taxpayer in a written protest requests an abatement of the penalty. Taxpayer's audit revealed that it failed to self-assess and remit use tax on clearly taxable items such as copier maintenance items, office supplies, maintenance repairs, advertising items, office equipment parts, first aid supplies, and other miscellaneous items. Taxpayer was audited previously with the same issues.

I. Tax Administration – Penalty

DISCUSSION

Taxpayer protests the penalty assessed and states that the amount of tax assessed during the tax audit was not a result of negligence but high turnover in the accounting department. Taxpayer states the procedures relating to the accrual of use tax have been put in place and should help correct any future use tax issues.

45 IAC 15-11-2(b) states, "Negligence, on behalf of the taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure

to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.”

Taxpayer failed to remit use tax on clearly taxable items, has had a prior audit with the same issues, and was aware of the consequences of not paying use tax due. Taxpayer has not provided reasonable cause to allow the department to waive the penalty.

FINDING

Taxpayer’s protest is denied.